

Jul. 2, 2002 9:49AM

Kelsch, Kelsch, Ruff and Kranda

No. 2397 P. 2

158

**U. S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:

Bjornson Oil Company, Inc.

Respondent)

) **SETTLEMENT AGREEMENT**

) **AED/MSEB - 6011**

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency (hereafter "EPA") and Bjornson Oil Company, P.O. Box 250, Cavalier, ND 58220 (hereafter "Respondent" or "Bjornson").

Preliminary Statement

1. On June 14, 2001, a Notice of Violation ("Notice") was issued to Respondent for violation of § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the anti-dumping regulations promulgated thereunder at 40 C.F.R. Part 80 ("regulations"). See Attachment 1. The EPA fuels regulations require reformulated and conventional gasoline to meet certain emission standards and impose on refiners and importers a number of quality assurance, recordkeeping, and reporting requirements. Violators of this law are subject to a maximum civil penalty of \$27,500 per day for each violation and the amount of the economic benefit or savings resulting from the violation.

2. After considering the gravity of the alleged violations, Respondent's history of compliance with the regulations, and the size of Respondent's business, EPA proposed a civil penalty of \$30,000 ("hereafter "the proposed penalty").

3. The parties, desiring to settle and resolve this matter, in consideration of the mutual covenants and agreements contained herein, which consideration is acknowledged by the parties to be adequate, agree as set forth herein.

Terms of Agreement

4. The parties agree that the settlement of this matter is in the public interest and that this Settlement Agreement ("Agreement") is the most appropriate means of resolving the matter.

5. By entering into this Agreement, Respondent does not admit or deny that it is in any way responsible for the alleged violations or that any violations have occurred. Respondent claims that the violations alleged in the Notice were not willful or knowing in nature. For the purpose of this Agreement, EPA does not contest this claim.

6. Respondent has taken steps to prevent future violations, including but not limited to, consulting with counsel regarding the regulatory requirements for importing conventional gasoline and seeking clarification from the Office of Enforcement and Compliance Assurance regarding the regulations governing the importation of conventional gasoline.

7. The parties stipulate and agree to the following matters. It is further agreed that these stipulations are applicable to this Agreement and any enforcement or penalty proceeding arising out of this Agreement or the subject matter of this Agreement:

- a. At all relevant times, Respondent was an importer as defined within the meaning of 40 C.F.R. § 80.2.
- b. On October 5, 1997, EPA audited Respondent to determine compliance with § 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the reformulated gasoline and anti-dumping fuels regulations issued thereunder at 40 C.F.R. Part 80.
- c. As a result of the audit, EPA alleged that Bjornson (1) failed to register with EPA as required by 40 C.F.R. § 80.76; (2) failed to file annual batch reports with EPA for 1995 and 1996 as required by § 80.105; (3) failed to conduct a quality assurance program as required by § 80.101; (4) failed to conduct attest audits for 1995 through 1998 as required by § 80.125; and (5) failed to import in 1998 three batches of gasoline that complied with the maximum per gallon VOC control standard of 9.0 psi as required by § 80.27.

8. Jurisdiction to settle this matter exists pursuant to § 211 of the Clean Air Act, 42 U.S.C. § 7545, 40 C.F.R. § 80.20, and other provisions of law.

9. After considering the gravity of the alleged violations, Respondent's history of compliance with the regulations, the economic benefit or savings resulting from the violations, Respondent's size of business, and actions taken to remedy the violations, EPA has determined to mitigate the civil penalty to \$13,000 subject to successful completion of the terms of this Agreement.

10. Respondent agrees to pay \$13,000 to the United States of America within thirty (30) days from the date that this Agreement is executed by EPA and returned to Respondent by certified mail return receipt requested ("the due date"). Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717.

Respondent agrees to pay the amount by check made payable to the "United States of America," and to mail the payments to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn.: AED/MSEB - 6011

A photocopy of the check shall be mailed simultaneously to:

Jul: 2. 2002 9:50AM Kelsch, Kelsch, Ruff and Kranda

No. 2397 P. 4

J. L. Adair, Attorney/Advisor
U.S. Environmental Protection Agency
MSEB/AED (2242-A)
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460
Attn.: AED/MSEB - 6011

11. Respondent also agrees to conduct a self-audit to ensure that it is in full compliance with the anti-dumping fuels requirements, 40 C.F.R. Subpart E; and, to disclose to EPA within eighty (80) days of the agreement any violations discovered as a result of the self-audit. Respondent further agrees to take certain steps to prevent future violations. As a retailer or distributor of conventional gasoline, Respondent agrees to check with its supplier(s) and review the product transfer document to ensure that the gasoline is appropriate for the time and area of use. Respondent also agrees to issue appropriate guidance to personnel to ensure compliance.

12. Time is of the essence to this Agreement. Upon failure to timely perform pursuant to paragraphs 9 or 10 of this Agreement, Respondent agrees to pay a stipulated penalty of \$30,000. This stipulated penalty is in addition to the proposed penalty. Upon such default this amount shall be immediately due and owing. The parties further agree that upon such default or failure to comply, EPA may refer this matter to the United States Attorney General for collection pursuant to § 211 (d) of the Clean Air Act, 42 U.S.C. § 7545(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to § 211 of the Clean Air Act; or pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claim of violation of § 211 of the Clean Air Act, 42 U.S.C. § 7545, and Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.

- a. EPA agrees to provide a written notice to Respondent before finding Respondent in default of this Agreement. EPA agrees to send the notice by certified mail, return receipt requested. Respondent shall have five (5) business days to receive the notice in the mail. Thereafter, Respondent shall have ten (10) business days to make all payments or cure the default. The notice shall be sent to Respondent at its last known business address.

13. This Agreement becomes effective upon the date executed by EPA, at which time a copy will be returned to Respondent.

14. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution is intended and is sufficient to bind Respondent.

15. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters consented to herein.

Jul 2, 2002 9:50AM Kelsch, Kelsch, Ruff and Kranda

No. 2397 P. 5

16. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

17. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

18. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement; for violations of § 211 of the Clean Air Act, 42 U.S.C. § 7545, which are not the subject matter of this Agreement; or for other violations of law; or with respect to other matters not within the scope of the Agreement. This Agreement in no way affects, or relieves Respondent of responsibility to comply with other state, federal or local law or regulations.

The following agree to the terms of this Agreement:

Bjornson Oil Company

By

Matt Bjornson
Secretary

Date:

7-10-02

United States

Environmental Protection Agency

By:

Richard Buckheit
/s/

Date:

7/30/02

Bruce C. Buckheit, Director

Air Enforcement Division

Office of Enforcement and Compliance Assurance